

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC. CIVIL APPLN.(CONTEMPT PETITION) No 1900 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 & 2 - Yes

3 to 5- No

LADANI JYOTIBEN KARSANBHAI

Versus

PRINCIPAL, SUSHILABEN GAJIPURA, SARVODAYA PRA. SHALA

Appearance:

MRS VASAVDATTA BHATT for Petitioner

MR DR BHATT for Respondent No. 1

SERVED BY RPAD - (N) for Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 12/03/98

ORAL JUDGEMENT (Per: B.C.Patel,J.)

The matter was called out yesterday and the learned advocate for the contemnor was not present. Hence, the Court ordered issuance of non-bailable

warrant. However, at the request of learned advocate for the contemnor, the Court has taken up the matter today.

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#. The facts in short are that the Tribunal, constituted under the Bombay Primary Education Act, in Application No.75 of 1993, allowed the application of the applicant-teacher and directed that the applicant should be paid her salary from 20th November, 1989 till February, 1993 as per the rules after deducting a sum of Rs.200/- p.m. which has been paid to her. She should also be given benefit till March, 1993 and the amount should be paid within a period of three months by account payee cheque. That order is passed on 11-4-1994 and the amount has not been paid and hence, the applicant was constrained to approach this Court by filing a petition under the provisions contained in the Contempt of Courts Act. The Court on 3rd October, 1994, issued notice, returnable on 21st November, 1994. From the papers, it appears that the Court was adjourning the matter at the request of learned advocate for the respondent or Court was constrained to adjourn the matter as neither the respondent nor his advocate used to remain present. The Court was constrained to issue coercive process. Yesterday also, the learned advocate for the respondent-contemnor was not present.

#. It appears that, an affidavit has been filed inter alia contenting that the order passed by the Tribunal is not in accordance with law. Suffice it to say that, it is not open for the contemnor to request the Court to decide the matter on merits as that would not be within the province of this Court and this Court is required to see whether the contemnor has carried out the direction given by the Court or not.

#. Mr.D.R.Bhatt, learned advocate appearing for the respondent, submitted that in view of a Division Bench judgment reported in 37 GLR page 812, this petition is not maintainable. We are sorry to say that such is not the view of a Division Bench. Once the direction is given by this Court to deposit an amount and the amount is not deposited, we fail to understand how this request can be made. The Court (Coram: S.M.Soni and R.R.Jain, JJ) on 18-9-1995 directed the respondent No.2 to deposit a sum of Rs.1,00,000/- within one week from the date of passing the order. Learned advocate requested for time and on this condition, time was granted. We do not find that this order is modified or varied. Suffice it to say that, till today, the amount is not deposited even as directed by this Court.

#. Mr.Bhatt submitted that review application has been preferred and therefore, this petition is not maintainable. This submission has no merits for the simple reason that the order passed by the Tribunal is not stayed. If such a contention is accepted, then, in all the cases, the applicant will have to face an awkward situation. On the one hand, there is an order passed in his favour and the applicant may not get the fruits of the order merely because of the statement is made by the respondent that review application is filed. One can appreciate if the review application has been granted, one is awaiting for the outcome as stay has been granted by the Tribunal itself. Till today, what has happened to the review application is not known to Mr.Bhatt. Possibly, it must have been rejected and therefore, the respondent must not have communicated to his advocate. If the result is in favour of the respondent, he would have definitely communicated to the advocate to see that the contempt proceedings may not proceed further. It is between the respondent-contemnor and the advocate for the respondent-contemnor to place necessary material before the Court and in absence of any material, merely the review application is filed is no ground not to proceed with the matter or not to pass any order.

#. There is nothing on record to say that the respondent is financially so bad that the respondent cannot comply with the order passed by the Court. The respondent is running the school even today. It is not the case that the school is closed because of non-availability of finance or the situation is such that the school cannot burden anything more. It is required to be noted that even if one wants to suggest that the contemnor is financially weak, one has to place necessary material before the Court to justify the case. Some record must be before the Court indicating that the school cannot pay the money. The order is passed on 11-4-1994. Thereafter, even this Court directed on 18-9-1995 to deposit a sum of Rs.1,00,000/- but not a single pie is deposited. That clearly reveals that the respondent is not interested in complying with the order passed by the Court. Under these circumstances, the only inference that can be drawn is that the respondent is not willing to comply with the order passed by the Tribunal.

#. The Apex Court in the case of J. Vasudevan Vs. T.R. Dhananjaya reported in AIR 1996 SC 137 has pointed out in para 14 the object of passing the order under the provisions of Contempt of Courts Act. The said para reads as under:-

"Coming to the mercy jurisdiction, let it be first stated that while awarding sentence on a contemnor, the Court does so to uphold the majesty of law, and not with any idea of vindicating the prestige of the Court or to uphold its dignity. It is really to see that unclenching faith of the people in the Courts remain intact. But, if the order of even the highest Court of the land is allowed to be wilfully disobeyed and a person found guilty of contempt is let off by remitting sentence on plea of mercy, that would send wrong signals to everybody in the country. It has been a sad experience that due regard is not always shown even to the order of the highest Court of the country. Now, if such orders are disobeyed, the effect would be that people would lose faith in the system of administration of justice and would desist from approaching the Court, by spending time, money and energy to fight their legal battle. If in such a situation mercy is shown, the effect would be that people would not knock the door of the Courts to seek justice, but would settle score on the streets, where muscle power and money power would win, and the weak and the meek would suffer. That would be a death knell to the rule of law and social justice would receive a fatal blow. This Court cannot be a party to it and, harsh though it may look, it is duty bound to award proper punishment to uphold the rule of law, how so high a person may be. It may be stated, though it is trite, that nobody is above the law."

#. In view of the aforesaid decision and considering the facts and circumstances of this case, we think it just and proper to order the respondent No.2-Amratlal Nathalal Borsaniya to be lodged in civil prison for a period of three months and to pay a fine of Rs.2,000/-. The respondent No.1, Smt. Sushilaben Gajipura, who is the Principal of the school, is also required to be strictly dealt with. However, the respondent No.1 being the Principal, we would not pass an order of directing to lodge her in civil prison but we would direct the respondent No.1 to pay a fine of Rs.500/-. The amount of fine, as ordered hereinabove, shall be paid by the respondents within a period of two weeks from today.

#. Mr.Bhatt, learned advocate for the contemnor, says that the contemnor would like to approach the Apex

Court. Before proceeding, he stated that he does not have any instructions in the matter since long and was requesting for time. As the matter is on board since long, it is for the advocate to take necessary instruction in the matter. Learned advocate, when the order is pronounced, seeks four weeks' time and requests the Court to suspend the order of lodging the respondent No.2 in civil prison for a period of three months with a view to approach the Apex Court.

##. We accept the request made by Mr.Bhatt and the order of imprisonment shall not be implemented for a period of four weeks from today. However, the amount of fine shall be paid within two weeks as directed hereinabove.

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